



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

AUG 14 1995

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMANDS, DISTRICT COMMANDS,
FIELD OPERATING ACTIVITIES, AND
LABORATORIES, ATTN: DIRECTORS/CHIEFS,
CONTRACTING DIVISION

SUBJECT: PARC Instruction 95-11, Potential Misuse of Operations
and Maintenance, Army (OMA) Funds or Any Other Similar One-Year
Funds in Corps of Engineers Contracting Actions

1. The obligation of OMA or similar type one-year funds creates unique problems in acquisition execution. Recent contract audits reveal that potential problems exist in the proper use and obligation of these types of funds for service, construction and federal information processing (FIP) resource acquisitions. The proper utilization of OMA funds is even more paramount in light of the Corps of Engineers increased responsibilities in delegation of procurement authority (DPA) and FIP thresholds. Consequently, a higher degree of contracting officer scrutiny is necessary to preclude any improper obligation of these type of funds.
2. The proper use OMA funds revolves around the concept of the Bona Fide Need rule. The attached CERM-F memorandum defines this rule and should be understood by all contracting officers within the Corps of Engineers. Any questions to the Bona Fide Need rule should be directed to the Resource Management office or Office of Counsel for clarification.
3. Due to the PARC's concerns with these type of funds, I am asking that each Director/Chief of Contracting and Contracting Officer pay meticulous attention to contract actions involving OMA funds. All Statements of Work and documentation involved in OMA acquisitions should be reviewed to ensure that the appropriate funding procedures are followed. Any questionable application of these type of funds should be referred to the Office of Counsel and Resource Management for clarification. Questionable acquisitions should be coordinated and documented with the appropriate approvals/concurrences of the functional proponents before the contract action is completed.

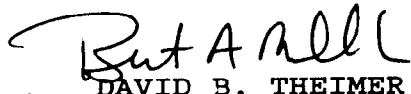
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SUBJECT: PARC Instruction 95-11, Potential misuse of Operations and Maintenance, Army (OMA) Funds or Any Other Similar One-Year Funds in Corps of Engineers Contracting Actions

4. Point of contact for this PARC Instruction Letter is Major Jeffrey W. Hills, CEPR-P, 202-761-8644 or fax 202-761-4752.

FOR THE COMMANDER:

Atch


DAVID B. THEIMER
la Colonel, FA
Acting Principal Assistant
Responsible for Contracting

Copy Furnished:

CECC-T
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DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

27 JUL 1995

CERM-F

MEMORANDUM FOR Commanders/Directors, MSCs, Districts, Labs and separate FOAs

SUBJECT: Bona Fide Need

1. Recent audits and investigations of procurement actions show that USACE Commanders/Directors and their staffs need a better understanding of the Bona Fide Need rule. This rule stems from Title 31, United States Code, Section 1502(a).

2. The law reads:

"The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law."

3. In some situations, expiring funds were accepted on reimbursable orders during, at or near the end of a fiscal year, and work not started until the new fiscal year had begun. In other situations, contracts for personal services which were readily severable into their specific fiscal years of applicability, were executed using one fiscal year's funds for services to be performed in the subsequent fiscal year. This was a problem revealed by a review of Federal Information Processing (FIP) contracts. Still other recent cases involved procurement of equipment/supplies within a fiscal year which were clearly not needed until an ensuing fiscal year, and in which it could not be demonstrated that a long administrative lead time was required in order to obtain the item(s). For the purpose of the Bona Fide Need rule, these are prohibited practices.

4. Each Commander/Director should understand the Bona Fide Need rule. More importantly, you must ensure that those individuals to whom you have entrusted fund acceptance and/or fund certification responsibilities fully understand the Bona Fide Need rule.

5. Enclosure 1 is a checklist that was originally disseminated to all Corps activities back in 1986. It was annexed to the Army

CERM-F

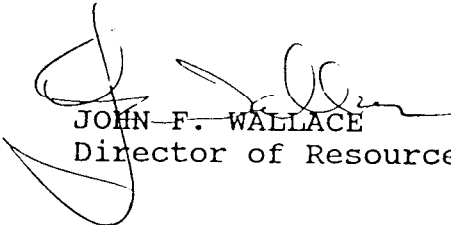
SUBJECT: Bona Fide Need

Audit Agency's 22 August 1986 Advisory Report on Bona Fide Need Rule, Report Number: HQ 86-A9. In addition, we have developed a checklist (encl 2) that addresses reimbursable funding/orders. Utilization of these checklists will give greater understanding of the legal requirement and help to avoid violations of the Anti-Deficiency Act.

6. Point of Contact is Mr. Tom McQuillen, CERM-F, Commercial (202)761-1940, DSN 763-1940.

FOR THE COMMANDER:

2 Encls


JOHN F. WALLACE
Director of Resource Management

CHECKLIST FOR REVIEWING APPLICATION OF
THE BONA FIDE NEED RULE 1/

	<u>Yes</u>	<u>No</u>
1. Do responsible personnel, including those in activities that establish requirements, order or contract for supplies and services, and certify fund availability, know of and understand the bona fide need rule?	—	—
2. Are responsible personnel aware of the guidance available for interpreting the bona fide need rule?	—	—
3. Do these personnel have job performance standards which require them to comply with the bona fide need rule?	—	—
4. Is all guidance available for use?	—	—
5. Are responsible personnel aware that the majority of bona fide need rule violations occur at fiscal yearend?	—	—
6. Are responsible personnel aware that violations of the bona fide need rule could result in funding violations, as described in AR 37-20 AR 37-1?	—	—
7. Are orders and/or acquisitions of supplies and services reviewed by management personnel to ensure that they represent bona fide needs?	—	—
8. Are requirements for yearend acquisitions identified by advance acquisition planning, or are they based on an emergency need?	—	—
9. Are acquisitions of supplies at yearend made for quantities contained in the original acquisition request, or are they being increased without adequate justification?	—	—
10. Are supplies bought at yearend needed to fill authorized stockage levels, to replace stocks used, or to satisfy production/fabrication leadtimes?	—	—
11. Are contracts for services that are severable (that is, not a single undertaking) separated into requirements for each fiscal year?	—	—
12. Are the proper fiscal year's funds obligated for orders and/or acquisitions of supplies and services?	—	—

1/ These checklist questions are intended to be a starting point for reviews by commanders, activity chiefs, and their staffs of the application of the bona fide need rule. The checklist is not intended to be all inclusive. Limited analysis of operations is needed to obtain "yes" or "no" answers to each question. If one or more questions result in a "no" answer, the review should be expanded to do detail tests of operations to determine whether violations of the bona fide need rule have occurred.

Encl 1

CORPS OF ENGINEERS ADDENDUM TO
CHECKLIST FOR REVIEWING APPLICATION OF THE BONA FIDE NEED RULE

- | | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| 1. When receiving reimbursable orders citing funds that will expire at the end of the current fiscal year (and in particular at fiscal year end), is a thorough and competent review performed to ensure that the funds can be legally obligated before expiration? | _____ | _____ |
| 2. Does the above review include an estimate of the administrative lead time that will be necessary to procure items through contract, and whether it therefore might be appropriate to use funds that will be appropriated in a future year? | _____ | _____ |
| 3. When posting obligations at year end, is care exercised to ensure that expiring customer funds are properly obligated and excess funds returned to the customer so that they might use them for a bona fide need they may have? | _____ | _____ |
| 4. When excess customer funds are being returned at fiscal year end, is the customer being apprised of funding needs for the next fiscal year? | _____ | _____ |

Encl 2